



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF IGNATOVICH v. RUSSIA

(Application no. 19813/03)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Ignatovich v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19813/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Robert Ivanovich Ignatovich (“the applicant”), on 17 April 2003.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 19 June 2006 the President of the First Section decided to communicate the complaints concerning non-enforcement, supervisory review, and unfairness of the proceedings to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1938 and lives in Tver, a town in the Tver Region. In 1997–2003 he was engaged in two sets of civil proceedings.

1. Proceedings against a maintenance enterprise

5. The applicant sued a municipal maintenance enterprise for its failure to repair a leaking roof in his house. On 17 November 1997 the Central District Court of Tver ordered the enterprise to repair the roof by 15 December 1997. This judgment became binding on 27 November 1997. According to the Government, this judgment was enforced on 15 December 2000. According to the applicant, this judgment has not been enforced to date.

6. In 1998–2001 bailiffs several times terminated the enforcement proceedings considering that the enterprise had repaired the roof, but the applicant asserted that the roof still leaked, and courts ordered the bailiffs to resume the enforcement.

7. In June 2000 the applicant sued several defendants (among them the Ministry of Justice – the authority responsible for the bailiffs) for their failure to enforce the judgment. After one first-instance and one appeal hearing, on 23 December 2002 the District Court found that the bailiffs should not have terminated the enforcement proceedings, ordered them to resume the proceedings, and awarded the applicant 5,000 Russian roubles by way of non-pecuniary damages against the Ministry of Justice. This judgment became binding on 18 February 2003 after an appeal hearing. The appeal court stated that the damages were to be paid by the Treasury.

8. On 18 February 2003 the applicant renounced the resumption of the enforcement proceedings because he had been frustrated by their past inefficiency. On this ground, on 6 May 2003 the bailiffs decided not to resume the enforcement proceedings.

9. On the Treasury's request, on 30 May 2003 the Presidium of the Tver Regional Court quashed the judgment of 23 December 2002 in the part concerning the damages. The Presidium found that the courts below had misinterpreted material law on non-pecuniary damages and that the bailiffs had not been responsible for the leaks.

The applicant was absent from this hearing. According to him, he had not been summoned. According to the Government, he had been informed about the time and place of the hearing by a letter of 18 May 2003.

2. Proceedings against the Savings Bank

10. In separate proceedings the applicant sued the Savings Bank for its failure to restore the purchasing power of his deposits. He asked the court to hear the case in his absence.

11. On 5 September 2003 the Gagarinskiy District Court of Moscow held against the applicant. In his appeal of 22 September 2003, the applicant asked for the case to be heard in his absence. In a corrigendum of 23 September 2003 the applicant asked for the case to be heard in his presence.

12. On 3 November 2003 the District Court informed the applicant about the time and place of the appeal hearing.

13. On 24 November 2003 the Moscow City Court rejected the appeal. The applicant was absent from this hearing.

II. RELEVANT DOMESTIC LAW

14. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

15. The applicant complained under Article 6 of the Convention about the length of the enforcement proceedings. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Insofar as relevant, these Articles read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

16. The Government argued that this complaint was inadmissible. The State had not been responsible for the maintenance enterprise's debts, because this enterprise had been an independent economic agent. The enforcement had lasted two years and 11 months because quality repairs had been possible only in spring or summer, because expert opinions had been needed, because the applicant had avoided participating in the proceedings, and because he had refused the resumption of the proceedings.

17. The applicant maintained his complaint. The maintenance enterprise had been financed mainly by the State and had been regulated by State rules. The judgment had still not been enforced due to the bailiffs' negligence, and the domestic courts had acknowledged this. His renunciation of the resumption of the enforcement proceedings had been a desperate move caused by the authorities' persistent negligence.

18. With regard to the Government's first argument, the Court reiterates that the State is responsible for municipal enterprises' debts (see, for example, *Gerasimova v. Russia* (dec.), no. 24669/02, 16 September 2004; *Kletsova v. Russia*, no. 24842/04, § 29, 12 April 2007). It follows that this complaint cannot be rejected as incompatible *ratione personae* with the provisions of the Convention.

19. With regard to the other arguments, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

21. First, it is necessary to determine the period to be considered.

22. As to the start date, the Court notes that the judgment became binding in November 1997. However, as the Convention came into force in respect of Russia on 5 May 1998, the Court is prevented *ratione temporis* from examining the events that had happened before this date, although it may take them into account (see *Yağcı and Sargin v. Turkey*, 8 June 1995, § 40, Series A no. 319-A).

23. As to the end date, the Court notes that the parties disagree about whether the judgment has been enforced. The Government assert that the

judgment was enforced on 15 December 2000, whilst the applicant asserts that the judgment is still outstanding.

24. Contrary to the Government's statement, the judgment could not have been enforced on 15 December 2000, because as late as in December 2002 a domestic court found that the judgment had been outstanding. Besides, the Government have not explained what event took place on 15 December 2000. On the other hand, on 18 February 2003 the applicant renounced the resumption of the enforcement proceedings. The Court will therefore consider this date as the end date.

25. It follows that the period of enforcement has been four years and nine months. This period is *prima facie* incompatible with the requirement of the Convention. The Court accepts that the judgment was not easy to enforce, because it required an involvement of third parties (repairmen and experts) and was susceptible to seasonal weather changes. Nevertheless, the fact remains that the domestic courts acknowledged that the bailiffs had terminated the enforcement proceedings improperly. The Court has no reason to depart from this finding.

26. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

27. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the supervisory-review quashing of the judgment of 23 December 2002.

A. Admissibility

28. The Government argued that the quashing had not breached the applicant's rights.

29. The applicant maintained his complaint.

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The Court has earlier found violations of Article 6 § 1 and Article 1 of Protocol No. 1 where, like in the present case, supervisory review was used to quash a binding judgment on the ground of an alleged misinterpretation of material law (see, for example, *Kot v. Russia*, no.

20887/03, § 29, 18 January 2007). There is no reason to depart from that finding in the present case.

32. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on this account too.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF SUPERVISORY-REVIEW HEARING

33. The applicant complained under Article 6 of the Convention that the supervisory-review hearing (§ 9 above) had been unfair, because he had not been summoned to it.

A. Admissibility

34. The Government argued that the applicant's right had been respected. He had been informed about the hearing in advance, but since under domestic law parties' appearance in supervisory-review courts had been optional, the applicant had decided to skip the hearing.

35. The applicant maintained his complaint.

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. Nevertheless, given the above finding of a violation by the very use of supervisory review, the Court considers it unnecessary to examine this complaint (see *Ryabykh v. Russia*, no. 52854/99, § 59, ECHR 2003-IX).

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF APPEAL HEARING

38. The applicant complained under Article 6 of the Convention that the hearing of 24 November 2003 (§ 13 above) had been unfair, because he had not been summoned to it.

39. The Government argued that this complaint was inadmissible. The applicant had himself asked the courts to hear the appeal in his absence. The court had properly informed the applicant about the time and place of the hearing, and he had had every possibility to attend, had he so wished.

40. The applicant maintained his complaint. In the corrigendum to his appeal he did ask to summon him, but the courts had failed to do this.

41. The Court notes that the applicant had indeed made clear his wish to attend the hearing. But it follows from a copy of the summons of 3 November 2003 submitted by the Government, that the court did inform the applicant about the time and place of the hearing. The applicant gainsays this fact, but cites no reasons.

42. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. Lastly, the applicant complained under Article 6 of the Convention about the length and outcome of the proceedings for damages. He complained under Article 6 of the Convention that in the proceedings against the Savings Bank the court had not sent him the Bank's comments on his claim, had miscited laws, and had failed to bring the State to trial. He complained under Article 1 of Protocol No. 1 that the purchasing power of his deposits had not been restored. He complained under Article 2 of Protocol No. 4 that he could not move to another town given that no buyer had been interested in a flat with a leaking roof.

44. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

46. With regard to the non-enforcement, the applicant claimed 12,000 euros (EUR) in respect of pecuniary damage and EUR 12,000 in respect of non-pecuniary damage. The claim for pecuniary damage represented his estimate of the flat's depreciation due to the leaking roof.

47. The Government argued that these claims had been unreasonable, ill-founded, and excessive.

48. The Court rejects the claim for pecuniary damage, because it is unsupported by evidence. On the other hand, the Court accepts that the applicant must have been distressed by the non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 3,000 under this head.

49. With regard to the proceedings against the Savings Bank, the applicant claimed EUR 21,000 in respect of pecuniary damage and EUR 4,000 in respect of non-pecuniary damage. The Government argued that these claims had had no causal link with the violations found. The Court rejects these claims because they have no causal link with the violations found.

B. Costs and expenses

50. The applicant made no claim for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

51. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning non-enforcement and the supervisory-review admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the supervisory-review quashing;
4. *Holds* that there is no need to examine the complaint under Article 6 of the Convention about the unfairness of the supervisory-review hearing;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President